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April 5, 2023

VIA ECF

Hon. Jesse M. Furman
United States District Judge
Southern District of New York
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10017

Re: **Schulte v. United States of America, et al.**
19-CV-3346 (JMF)

Your Honor:

We write on behalf of Mr. Joshua Schulte, the Plaintiff in this action, to respectfully withdraw his request to update or amend his pro se complaint. We ask the Court to continue the stay and administrative closure of this matter pending the final resolution of the criminal case. We have discussed this matter with Mr. Schulte, and he has expressly authorized us to make this request on his behalf. In this letter, we summarize the relevant history of this civil action, as well as the criminal action to which it is connected, and discuss the basis for our request.

Mr. Schulte first appeared on a criminal complaint in the Southern District of New York on August 24, 2017, in the matter indicted under docket 17 Cr 548. That criminal case is pending before this Court. On April 12, 2019, Mr. Schulte filed a pro se civil complaint alleging causes of action arising from his arrest, detention, and other aspects of the criminal case. ECF 2. On August 14, 2019, the Honorable Paul A. Crotty, United States District Judge, entered an order staying and administratively closing the civil action, pending the resolution of the criminal case. ECF 11.

On April 22, 2022, Mr. Schulte filed a letter, pro se, requesting permission to “update” the court and noting that he did not seek to “re-open the case or amend the complaint.” ECF 17. He further explained that he understood that “the courts do not toll time for many of the claims . . . while an individual is incarcerated,” and asked “the Court to notify me of the proper or preferred method to complete the task.” *Id.* On July 26, 2022, this Court issued an Order noting its authority to permit an amendment of the complaint but not an update. ECF 20. The Court concluded “that it is in the interests of justice to permit Mr. Schulte to amend his complaint to preserve any claims that may have accrued while the case was stayed.” *Id.* The Court set a deadline of August 26, 2022, for the filing of an amended complaint.

The Court subsequently extended the filing deadline to October 3, 2022. ECF 22. On October 7, 2022, Mr. Schulte sought the appointment of counsel. ECF 23. On October 20, 2022, the Court appointed current counsel to represent Mr. Schulte in this matter and set a deadline of

March 3, 2022 for the filing of an amended complaint, ECF 25. That deadline was extended to April 7, 2023, ECF 27, and this letter is filed in response to the Court's Order permitting amendment of the complaint.

As is apparent from the face of Mr. Schulte's pro se submission of April 22, 2022, ECF 17, at the time he wrote that letter, he did not appreciate that the stay and administrative closure of the case tolled the statute of limitations for the actions pled in his pro se filing. *See generally Wallace v. Kato*, 549 U.S. 384, 393-97 (2007) ("If a plaintiff files a false-arrest claim before he has been convicted (or files any other claim related to rulings that will likely be made in a pending or anticipated criminal trial), it is within the power of the district court, and in accord with common practice, to stay the civil action until the criminal case or the likelihood of a criminal case is ended."). He now understands that it is not necessary to take any further action to preserve the claims he raised in his initial pro se complaint.

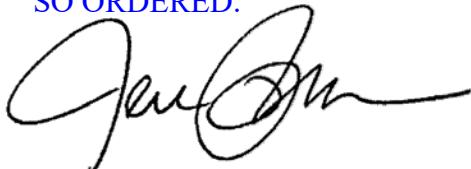
We have reviewed the set of civil actions Mr. Schulte has filed and have discussed them with him, including actions raising later accrued claims in separate actions. We also note that amendment of the instant pro se complaint at this time would be speculative, given the many uncertainties about the path of the pending criminal matter. While a final judgment of conviction would present significant immunity claims for the defendants, other resolutions of the matter could permit some or all of the claims arising from the instant pro se complaint to proceed, depending on the particular contours of any outcome favorable to Mr. Schulte.

Having considered these matters, Mr. Schulte directed and authorized counsel to request that his prior application to update his complaint, which the Court treated as a request to amend the complaint, be withdrawn, and that the case remain stayed and administratively closed pending the final resolution of the criminal case.

Thank you for your attention to this matter.

Application GRANTED. The case will remain administratively stayed pending final resolution of Plaintiff's criminal case.

SO ORDERED.



April 10, 2023

Respectfully submitted,

/s/
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VIA ECF